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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/680,982	10/07/2003	Michael Fulton	49272.830011.US0	6484

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HOLLAND & HART, LLP
555 17TH STREET, SUITE 3200
DENVER, CO 80201

EXAMINER	
GHERBI, SUZETTE JAIME J	
ART UNIT	PAPER NUMBER
3738	

DATE MAILED: 04/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/680,982	FULTON ET AL.	
	Examiner	Art Unit	
	Suzette J Gherbi	3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *17 February 2005 and 07 October 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-68* is/are pending in the application.

4a) Of the above claim(s) *See Continuation Sheet* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-5,11,14,16,20,29-31,36-38,40-42,47-55 and 58* is/are rejected.

7)☒ Claim(s) *32 and 33* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *1/5/04*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Continuation of Disposition of Claims: Claims withdrawn from consideration are 6-10,12,13,15,17-19,21-28,34,35,39,43-46,56,57 and 59-68.

DETAILED ACTION

Election/Restrictions

1. Claims 6-10, 12-13, 15, 17-19, 21-28, 34-35, 39, 43-46, 56-57 and 59-68 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 2/17/05.

Claim Objections

2. Claim 46 is objected to because of the following informalities: Claim 46 depends from a non-elected claim. Appropriate correction is required.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1, 3-5, 11, 14, 16, 20, 31, 36-38, 40-42, 47-55 and 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ross et al. 2005/0004671 in view of

Zdeblick et al. 2005/0055098. Ross et al. discloses the invention as claimed noting figures 1 and 2 comprising: a main body (10); a superior surface (12) residing on the main body and an inferior surface (13) residing on the main body opposite the superior surface; at least one side wall about the main body connecting the superior surface and the inferior surface; an anterior region residing on the main body and a posterior region residing on the main body opposite the anterior region and connected by the at least one sidewall; a plurality of linear surface protrusion (26) residing on at least on the superior surface and the inferior surface however the protrusions of Ross do not have a substantially flat bone engaging surface opposite the main body or a linear surface protrusion that has a generally trapezoidal cross section. Zdeblick et al. teaches such protrusions noting figures 1 elements 54; figure 3, elements 54, 56, 60, and section [0038]. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the protrusions of Ross in the shape of Zdeblic et al. because both inventions protrusions are for the purpose of preventing the implant from expulsion and to firmly be implanted against adjacent vertebrae.

5. Claims 2, 29-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ross et al. 2005/0004671 in view of Zdeblick et al. 2005/0055098 and further in view of Boyle et al. 6,277,149. Both Ross and Zdeblick et al. have been disclosed above however they do not disclose a bone device or milling. Boyle et al. teaches that vertebral prosthesis are known to be made from bone by milling techniques see col. 4, lines 42-67. It would have been obvious to one having ordinary skill in the art at the

time the invention was made to make the devices of Ross and Zdeblick et al from a bone material as taught by Boyle et al. because all of the spinal implant are made with projections for gripping the adjacent vertebrae and are capable of utilizing bone, ceramic, metal and various other materials (*for examples please see Marchosky 6,413,278 col. 5, lines 32-40 as noted in the conclusion*).

Allowable Subject Matter

6. Claims 32-34 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Malberg et al. 2005/0021144 ; Bartish, Jr. et al. 2004/0127990 ; Mason 2002/0049497 ; Picha et al. 2002/0040242 ; Thalgott 6,458,159 ; Keller 6,416, 551 ; Marchosky 6,413,278 ; Kuslich et al. 6,287,343 ; Paul et al. 6,258,125 ; Biscup 6,245,108 all show related material.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Suzette J. Jackson whose work schedule is Monday-Friday 9-6:30 off every other Friday and whose telephone number is 571-272-4751.

9. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306.

10. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

Suzette J-J Gherbi
31 March 2005